

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AVENTIS PHARMA S.A.,)	
SANOFI-AVENTIS U.S., LLC)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 07-721-GMS
)	
HOSPIRA, INC.)	
)	
Defendant.)	

SCHEDULING ORDER

This _____ day of _____ 2008, the Court having conducted a Rule 16 Scheduling Conference pursuant to Local Rule 16.2(b) on April 3, 2008, and the parties having determined after discussion that the matter cannot be resolved at this juncture by settlement, voluntary mediation or binding arbitration;

IT IS ORDERED that:

1. **Rule 26(a) Initial Disclosures.** Unless otherwise agreed to by the parties, they shall make their initial disclosures pursuant to Federal Rule of Civil Procedure 26(a) on or before May 1, 2008.
2. **Joinder of other Parties and Amendment of Pleadings.** All motions to join other parties and amend the pleadings shall be filed on or before September 26, 2008.
3. **Markman Claim Construction Hearing.** A *Markman* claim construction hearing shall be held on March 2, 2009 at 9:30 a.m. The *Markman* hearing is scheduled for a total of 3.0 hours with each side having 1.5 hours. The parties shall exchange lists of the claim terms that they believe need construction, as well as their proposed constructions, on November 3, 2008.

The parties shall meet and confer in an effort to narrow and reduce the number of claim construction issues on or before November 10, 2008. On or before December 5, 2008, the parties shall submit a Final Joint Claim Chart which shall include citations to the intrinsic evidence upon which they rely. The plaintiffs shall submit to the court, a Joint Appendix of Intrinsic and Extrinsic Evidence (the "Joint Appendix") containing all intrinsic and extrinsic evidence relied upon in the claim construction briefing. A sample table of contents of the Joint Appendix can be located on this court's website at www.ded.uscourts.gov. The Joint Appendix shall be filed on the same day as the answering claim construction briefs. The parties shall file opening claim construction briefs on December 19, 2008, and answering claim construction briefs on January 23, 2009.

4. **Discovery**. All fact discovery in this case shall be initiated so that it will be completed on or before March 27, 2009. Opening expert reports on issues on which a party bears the burden of proof shall be served on or before May 8, 2009. Rebuttal expert reports shall be served on or before June 12, 2009. Expert discovery in this case shall be initiated so that it will be completed on or before July 16, 2009.

a. **Discovery and Scheduling Matters**. Should counsel find they are unable to resolve a discovery or scheduling matter, the party seeking the relief shall contact chambers at (302) 573-6470 to schedule a telephone conference. Not less than forty-eight hours prior to the teleconference, the parties shall file with the court, via electronic means (CM/ECF), a **joint, non-argumentative** letter agenda not to exceed two (2) pages outlining the issue(s) in dispute. A sample letter can be located on this court's website at www.ded.uscourts.gov. After the parties have had three (3) discovery teleconferences, they will be required to file a joint letter showing good cause why the court should permit a fourth discovery teleconference. Should the

Court find further briefing necessary upon conclusion of the telephone conference, unless otherwise directed, the party seeking relief shall file with the court a **TWO PAGE LETTER**, exclusive of exhibits, describing the issues in contention. The responding party shall file, within five (5) days from the date of service of the opening letter, an answering letter of no more than **TWO PAGES**. The party seeking relief may then file a reply letter of no more than **TWO PAGES** within three (3) days from the date of service of the answering letter.

5. **Confidential Information and Papers Filed under Seal.** Should counsel find it will be necessary to apply to the Court for a protective order specifying terms and conditions for the disclosure of confidential information, they should confer and attempt to reach an agreement on a proposed form of order and submit it to the Court within ten (10) days from the date of this Order. When filing papers under seal, counsel should deliver to the Clerk an original and two copies of the papers.

If, after making a diligent effort, the parties are unable to agree on the contents of a joint proposed protective order, then they shall follow the dispute resolution process outlined in paragraph 4(a).

6. **Settlement Conference.** Pursuant to 28 U.S.C. §636, this matter is referred to United States Magistrate Judge Leonard P. Stark for the purpose of exploring the possibility of settlement. If the parties agree that the possibility of settlement may be enhanced by such referral, the parties shall contact the assigned United States Magistrate Judge to schedule a settlement conference with counsel and the clients.

7. **Applications by Motion.** Except as provided in this Scheduling Order or for matters relating to scheduling, any application to the Court shall be by written motion filed, via electronic means (CM/ECF). Unless otherwise requested by the Court, counsel shall **not** deliver

copies of papers or correspondence to Chambers. Any non-dispositive motion should contain the statement required by Local Rule 7.1.1. Except as otherwise provided in this scheduling order, or where the Court by subsequent order so directs (upon request of a party, supported by a showing of good cause), the page limitations for briefing in this case shall not be as set forth in this Court's local rules, but instead shall be as follows: 20 pages for opening and answering briefs, and 10 pages for reply briefs.

8. **Oral Argument.** If the Court believes that oral argument is necessary, the Court will schedule a hearing pursuant to Local Rule 7.1.4.

9. **Daubert Issues.** The Court will address Daubert issues at the Pretrial Conference. Daubert issues are properly raised as a Motion *in Limine* (to be submitted in accordance with the Motion *in Limine* schedule) and will count toward the five (5) motions permitted per side.

10. **Pretrial Conference.** On September 30, 2009, beginning at 10:00 a.m., the Court will hold a Pretrial Conference in Chambers with counsel. Unless otherwise ordered by the Court, the parties should assume that filing the Joint Pretrial Order satisfies the pretrial disclosure requirement of Federal Rule of Civil Procedure 26(a)(3). A sample form of Pretrial Order can be located on this court's website at www.ded.uscourts.gov. Thirty (30) days before the Joint Proposed Pretrial Order is due, plaintiffs' counsel shall forward to defendant's counsel a draft of the pretrial order containing the information plaintiff proposes to include in the draft. Defendant's counsel shall, in turn, provide to plaintiffs' counsel any comments on the plaintiffs' draft as well as the information defendant proposes to include in the proposed pretrial order. **Motions in limine:** No party shall file more than 5 motions *in limine*. Motions *in limine* and opening briefs shall be filed by August 8, 2009; answering briefs shall be filed by September 1, 2009; and reply briefs

shall be filed by September 8, 2009. Opening and answering briefs shall not exceed five (5) pages and reply briefs shall not exceed three (3) pages. The parties shall file with the Court the **joint** proposed final pretrial order with the information required by the form of Final Pretrial Order which can be located on this court's website at www.ded.uscourts.gov on or before September 8, 2009.

11. **Trial.** This matter is scheduled for a 7-day bench trial beginning at 9:00 a.m. on October 26, 2009.

12. **Scheduling.** The parties shall contact chambers, at (302) 573-6470, only in situations where scheduling relief is sought, and only then when ALL participating counsel are on the line for purposes of selecting a new date.

Chief Judge